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EXAMINER

CIRIC, LJILJANA V

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 3753     |              |

DATE MAILED: 10/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/589,330

Applicant(s)

CHASTINE ET AL.

Examiner

Ljiljana (Lil) V. Ciric

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 16-18, 20-22, 24, 26-64 and 66-96 is/are pending in the application.
- 4a) Of the above claim(s) 38-52 and 73-94 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-18, 20-22, 24, 26-37, 53-64, 66-72, 95 and 96 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. This Office action is in response to the reply filed on April 9, 2004.
2. Claims 16 through 18, 20 through 22, 24, 26 through 64, and 66 through 96 remain in the case. Of these, claims 38 through 52 and 89 through 94 remain withdrawn from further consideration, claims 95 and 96 are new.

### *Response to Arguments*

3. Applicant's arguments filed on April 9, 2004 have been fully considered but they are generally not found persuasive.

For example, in response to the examiner's questioning of whether or not the limitations "comprises a chill side and a thaw side" corresponds to any particular structure, applicant merely argues that "claims 31 and 65 are clear to which structure is encompassed by the limitation [sic], specifically claim 31 and 65 recite 'said rack comprises a chill side and a thaw side' and are submitted to be definite, thus all claims depending therefrom are also submitted to be definite", yet applicant fails to clarify which particular structure (if any) corresponds to the "chill" side of the rack and which particular structure (if any) corresponds to the "thaw" side of the rack, whether the "chill" side has a structure which is different than that of the "thaw" side", or whether the terms "chill" and "thaw" merely specify the intended use of two sides of the rack. The indefiniteness rejection related to these limitations is thus repeated and restated below. If applicant does not address this issue further, these limitations will continue to be read very broadly as intended use recitations.

In response to applicant's argument that the Peterson et al. and the O'Hearne references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "a pan positioned within a fresh food compartment", "a heater element positioned such that air

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entering the pan is at a temperature greater than a temperature of the fresh food compartment", "an air supply, wherein the air supply includes a freezer compartment") are not recited in the rejected claims.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's argument that "Peterson et al. do not describe a heater element positioned to warm air that passes through the air handler" is not persuasive because it is based on an inappropriately narrow interpretation of the pending claims. Note that, for example, at least the motor of each of fans 54 and 56 is readable on the "heater element" as broadly interpreted as required. Applicant is thus respectfully reminded that claims in a pending application should be given their *broadest* reasonable interpretation. See *In re Pearson*, 181 USPQ 641 (CCPA 1974).

Applicant's traversal of "the rejection of Claims 16-19, 21-24, 29-37, 53, 54, 58, 60, 61, and 63-67" under 35 U.S.C. 102(b) as being anticipated by O'Hearne et al. is noted by the examiner. However, the examiner also notes that claims 16 through 19, 21 through 24, 28 through 37, 53, 54, 58, and 60 *through 67* were rejected under 35 U.S.C. 102(b) as being anticipated by O'Hearne.

On page 28 of the reply, applicant implies that the O'Hearne et al. reference teaches away from the presently claimed invention, but fails to specifically point out or explain *how* this reference does so.

Applicant's arguments thus fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments thus do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

#### *Election/Restrictions*

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4. In response to applicant's continued arguments regarding which of the claims added via the reply filed on June 26, 2003 are readable on the elected invention (i.e., Group II), the examiner hereby notes that, upon reconsideration in view of applicant's arguments and amendments, previously withdrawn claims 73 through 88 are no longer withdrawn and will be examined herewith.

5. Other than as noted above, however, applicant's continued traversals of the previously made election requirement are moot since the election requirement was already made FINAL via the previous Office action.

*Claim Rejections - 35 USC § 112*

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 16 through 18, 20 through 22, 24, 26 through 37, 53 through 64, 66 through 88, 95, and 96 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 newly recites "said air supply comprises a freezer compartment". Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term "air supply" in claim 16 is used by the claim to mean "freezer compartment", while the accepted meaning is "source of air." The term is indefinite because the specification does not clearly redefine the term, and claim 16 as well as all claims depending therefrom are rendered indefinite thereby.

Upon reconsideration, it is noted that the terms "rapid" and "quick" in the claims are relative terms which render the claims indefinite. The terms "rapid" and "quick" are not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of

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ordinary skill in the art would not be reasonably apprised of the scope of the invention. Thus, as used to qualify the rate at which the inventive system is to be operable for chilling food, for example, these terms render the same indefinite.

Claim 26 recites "said adapter configured to apportion *a percentage of said flow communication* to said air handler supply air flow path". Is this intended to mean that the adapter is configured to apportion a percentage of the air flow? If so, recommend restating the limitation accordingly.

It is still not clear which particular characterizing structural elements, if any, are intended to be encompassed by the limitations "said rack comprises a chill side and a thaw side" appearing in claim 31, thus rendering indefinite this claim and all claims depending therefrom with regard to the scope of protection sought. Claim 64 contains the same limitation and is similarly rendered indefinite thereby. Note that absent any further clarification by applicant, the limitations "a chill side and a thaw side" are being broadly interpreted by the examiner as being synonymous with "a side for chilling and a side for thawing"—in other words, "chill" and "thaw" are being interpreted as merely stating the intended use of two respective sides of the rack.

Claim 53 now recites "A quick chill and thaw system *for a refrigerator including a fresh food compartment*, said quick chill and thaw system comprising: a pan *positioned within the fresh food compartment*, wherein *the fresh food compartment* is at a first temperature", but the intended scope of protection sought thereby is not clear because while it appears that the refrigerator and the fresh food compartment are only recited in the preamble as part of an intended use clause, the body of the claim later refers to the fresh food compartment as if the fresh food compartment of the refrigerator is being positively recited by the claim. This inconsistency between the preamble and the body of the claim renders indefinite claim 53 and all claims depending therefrom. If the fresh food compartment is positively recited in the body of the claim as such, then recommend replacing "for a refrigerator" in the preamble with "in a refrigerator". If the fresh food

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compartment is not being positively recited by the body of the claim, then recommend removing references to the pan being positioned *within the fresh food compartment*.

Base claim 73 recites, in the preamble, "A refrigerator including a first compartment and a quick chill and thaw system located in the first compartment, said quick chill and thaw system comprising", but then each of claims 74 through 79 depending from claim 73 merely recite "A quick chill and thaw system in accordance with Claim 73" or similar, thus making it unclear whether the refrigerator of base claim 73 is or is not also included in each of dependent claims 74 through 79. Claim 96 similarly has a preamble which appears to indicate that the claimed invention is drawn to the subcombination of a quick chill and thaw system, while the body of the claim appears to additionally positively recite the fresh food compartment of a refrigerator.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. As best can be understood in view of the indefiniteness of the claims, claims 16 through 18, 21, 22, 24, 26 through 37, 53 through 61, 63, 64, and 66 through 75, 77 through 88, 95, and 96 are rejected under 35 U.S.C. 102(b) as being anticipated by Peterson et al.

Peterson et al. discloses the invention essentially as claimed including for example a slideable drawer or pan 40 configured for slide-out as shown in Figures 17 and 18, the drawer or pan 40 comprising a tray or basket or rack 238 and/or 232; a heater element 82; and adapter or damper element readable on automatic baffle assembly 96 or on movable deflector 148; and, a fan 54 or 56. Note that third compartment 34 including the drawer or pan 40 may be used as a fresh food compartment. See column 7, lines 49-55.

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The reference thus reads on the claims.

10. Alternately for claims 53, 54, 58, 60, 61, and 63, and as best can be understood in view of the indefiniteness of the claims, claims 53, 54, 58, and 60 through 63 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Hearne.

O'Hearne discloses the invention essentially as claimed including for example a pan or tray or shelf 70 as shown in Figures 5 and 7 configured for slide-out access; a foil type heater element 52 [see column 3, line 31]; and, a fan 54.

The reference thus reads on the claims.

*Allowable Subject Matter*

11. Claims 20 and 76 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.


*Conclusion*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (703) 308-3925.

While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

The NEW central official fax phone number is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

  
LJILJANA V. CIRIC  
PRIMARY EXAMINER  
ART UNIT 3753